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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

DATE: MAY 20 2011 Office: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a researcher. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner had not established that she qualifies for classification as a member of the professions holding an advanced degree or that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief, the petitioner's transcript and reference letters. For the reasons discussed below, while the petitioner has established that she is a member of the professions holding an advanced degree, she has not established that it is in the national interest to waive the alien employment certification in this instance. Ultimately, the petitioner's record as a research assistant on one collaborative study that attracted moderate citation several years before the petitioner filed the petition followed by promising research that has yet to influence the field is insufficient evidence to warrant a waiver of the alien employment certification process in the national interest.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The record contains a Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student, dated August 10, 2004 indicating that the petitioner would pursue her doctorate at the University of Arizona. The record contains no evidence that the petitioner received this degree or even that she continues to

pursue it. Instead, the petitioner works full-time as a Research Specialist at the University of Arizona pursuant to a J-1 nonimmigrant visa. The petitioner, however, holds a Master's degree in Biological Science from Ajou University. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors that U.S. Citizenship and Immigration Services (USCIS) must consider when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, the petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The use of the term "prospective" is meant to require future contributions by the alien and is not intended to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The AAO concurs with the director that the petitioner works in an area of intrinsic merit, drug screening, and that the proposed benefits of her work, improved cancer treatments, would be national

in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, U.S. Citizenship and Immigration Services (USCIS) generally does not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification she seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, the AAO notes that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

The petitioner lists the following experience on her curriculum vitae:

- Administrational assistant and teaching assistant at Ajou University from 1997 through 1999;
- Research assistant at the Asan Institute for Life Sciences at the University of Ulsan from 1999 through 2002;
- Research specialist at Samsung Biomedical Research Institute from 2002 through 2003;
- Research specialist at Yonsei Biomedical Research Center from 2003 through 2004;
- Graduate assistant at the University of Arizona from 2004 through 2006;
- Research technician and laboratory manager at the University of Arizona from 2006 through 2008; and
- Research specialist and laboratory manager at the University of Arizona from 2008 through the date of filing.

The petitioner submitted three published articles dated in 2000 and 2002. The petitioner submitted an unpublished manuscript reporting collaborative work at the University of Arizona. As of the date of filing, this work was unpublished. The petitioner also submitted evidence of two presentations but no evidence as to where the petitioner or a coauthor presented this work. The petitioner does not even list these presentations on her curriculum vitae. Thus, as of the date of filing on January 14, 2010, the petitioner had not published a single article or presented work at a single major conference in over seven years.

Publication alone merely demonstrates the dissemination of the research and cannot demonstrate the ultimate impact once published. The petitioner submitted evidence that, as of the date of filing, the petitioner's first-authored article had garnered a small number of independent citations and that the article listing the petitioner as fourth of five authors had garnered a moderate number of independent citations.

Initially, in response to the director's request for additional evidence and again on appeal, counsel relies on an unpublished decision by this office sustaining an appeal where the beneficiary's research had garnered fewer citations than present in this matter. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. USCIS decides national interest wavier cases on a case-by-case basis after analyzing *all* of the evidence of record, not just citations. There is no specific number of citations that either establishes or precludes eligibility. Moreover, as stated above, the petitioner had not published a single article in the past seven years. Thus, her publication record, regardless of citations, cannot establish a past record that justifies projections of *future* benefits to the national interest. *See id.* at 219.

The remaining evidence consists of letters. [redacted], an associate professor at the Asan Medical Center, discusses the petitioner's earlier work in Korea. [redacted] discusses the petitioner's graduate research on skeletal muscle in which she demonstrated that "retinoic acids negatively modulate the differential of L6 myoblasts by increasing the intracellular level of cAMP (an intracellular second messenger.)" [redacted] does not explain how this work impacted the field. Instead, he asserts that the Asan Institute for Life Sciences recruited the petitioner based on her graduate research. [redacted] explains that at the Asan Institute for Life Sciences, the petitioner "participated in the development of new therapeutic anti-cancer treatments for bladder and kidney cancer." [redacted] further explains the importance of addressing resistance to chemotherapy for cancer patients and continues:

> [The petitioner's] research noted that the increased expression of Bcl2, which is known to suppress apoptosis, is related to the development of drug resistance in many different cancers. Specifically, in bladder cancer, she noted that transfection of Bcl2 gene cell lines caused cancer cells to become resistant to the cisplatin in chemotherapy. [The petitioner's] research utilized this knowledge to assess the changes in the expression of Bc12 in cisplatin-resistant bladder cancer cell lines and ultimately, the reversibility of chemoresistance to cisplatin with antisense oligonucleotide against Bcl2.

The record establishes that the petitioner's research into Bcl2, performed as a research assistant in collaboration with four other authors, was the basis of her moderately cited article. This single collaboration, dating several years before the filing date of the petition, cannot form the sole basis of eligibility.

[redacted] then discusses the petitioner's research on new therapeutic methods for treating tissue and organ damage from chronic disease and cancer. [redacted] explains the importance and difficulty of using self-renewing cells and states that the petitioner proposed the use of umbilical cord blood. [redacted] continues:

> [The petitioner's] research attacked these two goals to propose a method for efficient isolation and cultivating the mesenchyal stem/progenitor cells from the umbilical cord blood through antigen-antibody reaction using the mesenchyal stem/progenitor cell-regulated antibodies. Her research further led to ultimately providing a viable method for the differential of these cells into the mesenchyal tissues – representing a stunning achievement in treating the underlying causes of tissue and organ damage in humans.

[redacted] provides no examples of umbilical cord blood being used to treat tissue damage based on the petitioner's work or of independent pharmaceutical companies, clinics or academic laboratories pursuing such treatments based on this work. Instead, [redacted] concludes that the petitioner's work "has vast potential to be applicable to human-based cancer research." This statement is speculative. The record also lacks evidence that the petitioner published the results of her study of umbilical cord blood.

[redacted] at the University of Arizona, discusses the petitioner's work at that institution. [redacted] states that the petitioner investigated the gemcitabine signaling pathways as a means to prevent chemoresistance. [redacted] discusses the goals of the research and continues:

> [The petitioner's] early research has shown that DNA ligase I levels are elevated after exposure to a variety of chemotherapeutic drugs, including cisplatin, ara-C, gemcitabine, and topotecan, in various human cancer cells. Overall, [the petitioner's] research has shown the potential to elucidate the molecular basis and the biological significance of induction of DNA repair genes in human cancer cells in response to major chemotherapeutics in order to identify potential targets appropriate for new anticancer agents that will enhance the lethal activity of many cancer chemotherapies.

The record contains a presentation of the preliminary results of this work but no evidence as to where the petitioner or a coauthor presented this work. The results of this work are too preliminary for USCIS to gauge the influence of this work in the field.

[redacted] an assistant professor at the University of Arizona, discusses his collaboration with the petitioner investigating vascular endothelial growth factor (VEGF), a chemical signal that stimulates the growth of new blood vessels (angiogenesis) [redacted] explains the role of angiogenesis in tumor growth and continues:

> [The petitioner's] early research during this investigation demonstrated that the G-rich and C-rich strains could form specific G-quadruplex or i-motif structures, respectively, on the polypurine/polypyrimidine tract in the proximal promoter of these genes. That observation allowed [the petitioner] to subsequently explore a new therapeutic strategy to repress the transcription activation of the human VEGF and HIF-gene with small molecules capable of binding selectively to non-canonical DNA structures formed with the promoter region of these genes. Overall, the results of [the petitioner's] research have produced a promising pathway for the development of more effective human anticancer drugs – a notable achievement in light of the global nature of the disease.
>
> The results of [the petitioner's] research demonstrate that she is able to provide advanced solutions to human cancer treatment, through examining unique avenues for the development of anticancer drugs. Through development like that of [the petitioner's], it is possible that more effective anticancer therapies may soon be produced – benefiting millions of people worldwide who suffer from various forms of cancer.

[redacted]st sentence, grouping the petitioner's study with similar research, is highly speculative. Once again, no journal has yet published this research. Rather, this research is the subject of the petitioner's unpublished manuscript. Thus, it is too early to gauge the ultimate influence of this work.

[redacted] at the University of Arizona, discusses the petitioner's drug screening method. [redacted] explains the challenges in screening approximately 14,000 potential anti-cancer drugs and asserts that the petitioner "successfully created an anti-cancer drug screening method to determine the effect of various drugs on cancer cells." According to [redacted] the petitioner first screened the drugs with microarrays to determine their effect on a breast cancer cell angiogenesis gene. [redacted] continues:

> [The petitioner] then selected 2,000 drugs from the first screening test and subsequently very accurately measured the exact expression level of the angiogenesis gene of interest. Finally, [the petitioner] selected 40 drugs from the second screening test and used the techniques Western blot and ELISA assay to confirm that not only had the expression of the gene changed, but more importantly, levels of the protein product of that gene had also changed.

[redacted]concludes that the petitioner's technology "provides new approaches to testing potentially thousands of different candidate anti-cancer drugs on many different types of tissue." [redacted] does not suggest that the petitioner presented, published or patented her innovation or that other independent laboratories are applying or seeking to apply this methodology for screening anti-cancer drugs.

[redacted] finally praises the petitioner's unique educational background and career experiences. Special or unusual knowledge or training, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. *Id.* at 221.

[redacted] a former research assistant professor at the University of Arizona, asserts that some of the drugs the petitioner tested "are currently in the process of being tested in animals." [redacted] letter postdates the filing of the petition. As such, the record does not establish that these tests were underway as of the date of filing, the date as of which the petitioner must establish her eligibility. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). Moreover, [redacted] does not identify the laboratory where these tests are taking place or even whether or not these tests are a result of the petitioner's work rather than other studies pointing to the drugs' potential. [redacted] further states that the petitioner's new screening method allows researchers to save time, but fails to identify a single independent laboratory using this method.

In response to the director's notice of intent to deny the petition, the petitioner submitted letters from more independent sources. [redacted] an associate professor at Clarkson University, asserts that he is familiar with the petitioner's work based on his familiarity with the research "at many laboratories." [redacted] does not attach a curriculum vitae. [redacted] discusses the petitioner's research with VEGF, characterizing it as "revolutionary." [redacted] concedes, however, that the petitioner needs to complete the *in vivo* trials of the candidate drugs. [redacted] concludes: "I know that her work on repressing VEGF and HIF-1α genes has caused other researchers like myself to realize the importance of VEGF and HIF-1α expression for the development of anticancer drugs from her work." USCIS need not accept primarily conclusory assertions.[1] [redacted] does not explain what research he is undertaking based on the petitioner's work or provide examples of other independent researchers pursuing VEGF and HIF-1α based on the petitioner's findings. In fact, [redacted] does not explain how other researchers have learned of this work as the petitioner has yet to publish or present her results at a widely attended conference.

[redacted] at the University of Texas at Austin, asserts that while he has not met or worked with the petitioner, he is familiar with her "outstanding contributions to anti-cancer research." [redacted] does not attach a curriculum vitae. [redacted] asserts that the petitioner has screened thousands of drugs and asserts that she is "credited in the field" with exposing the series of reactions involving VEGF and HIF-1α that leads to tumor growth. [redacted] does not identify any independent laboratory using the petitioner's drug screening method. He also fails to explain how the petitioner is credited in the field for her work on VEGF when this work remains unpublished.

The petitioner submits two new letters on appeal. [redacted], a professor at the University of Missouri-Columbia, discusses the petitioner's research with Bcl2. [redacted] states: "These phenomenal discoveries are exactly what we have been waiting for to help us fight the resistance some

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[1] *1756, Inc. v. The Attorney General of the United States,* 745 F. Supp. 9, 15 (D.C. Dist. 1990).

cancer cells develop towards chemotherapy drugs." [redacted] then concludes: "Thanks to [the petitioner's] research findings cancer patients can expect improved therapy options." [redacted] does not provide examples of any developments towards this end in the last seven years since the petitioner published these findings.

[redacted] at Chapel Hill, asserts that after reading the petitioner's publications, he knows "that she has made several discoveries that have had a major impact on cancer research, and has made profound contributions to what we know concerning this group of diseases." He then discusses the petitioner's original work with cisplatin, stating that her work "has provided researchers an opportunity to develop new techniques to prevent resistance to anticancer drugs in cancer cells using antisense oligonucleotides." [redacted] fails to provide any examples of work towards these new techniques in the seven years since the petitioner published her findings.

[redacted] then notes the petitioner's more recent work on "drug development." He explains that drug discovery can take many years to yield results and involves intellectual property concerns that prevent publication. [redacted] that while the petitioner has no recent publications, she has been "intensely focused on the development and testing of several potential drug candidates." The petitioner is working for a university rather than a pharmaceutical company. Moreover, while the AAO will take intellectual property issues into consideration, it is still the petitioner's burden to demonstrate her influence in the field. The petitioner has submitted no patents or evidence of pharmaceutical companies expressing interest in licensing or otherwise applying her results. The record also contains two presentations and an unpublished manuscript. Thus, the record is not persuasive that the petitioner is working on issues that are too confidential to publish should a journal accept the manuscript. [redacted] also notes the petitioner's "invention of a new method to rapidly screen thousands of drug candidates." While he asserts that this technique "has significantly aided the drug discovery field," he provides no examples of independent laboratories using the technique.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as we have done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2

(BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The letters considered above primarily contain bare assertions of an impact in the field without providing specific examples of how the petitioner's innovations have influenced the field. Merely repeating the legal standards does not satisfy the petitioner's burden of proof.[2] The petitioner also failed to submit sufficient corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

Ultimately, the petitioner is a research specialist who, as a research assistant, has contributed to a single moderately cited study seven years before filing the petition. While the petitioner has technical expertise, such objective qualifications can be articulated on an application for alien employment certification. *NYSDOT,* 22 I&N Dec. at 220-21. While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. The record does not demonstrate that the petitioner's documented past record justifies projections of future benefit to the national interest to a greater extent than an available U.S. worker with the minimum requirements for the occupation.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.

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[2] *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc.*, 745 F. Supp. at 15.